

State of California
Regional Water Quality Control Board
San Diego Region

EXECUTIVE OFFICER SUMMARY REPORT
February 11, 2004

ITEM: 7

SUBJECT: Fifth Avenue Condos, LLC, San Diego: Administrative Assessment of Civil Liability containing a \$6,000 Mandatory Minimum Penalty against Fifth Avenue Condos, LLC for violation of effluent limitations established by Order No. R9-2000-0090, General Waste Discharge Requirements for Temporary Groundwater Extraction and Similar Waste Discharges to San Diego Bay and Storm Drains or Other Conveyance Systems Tributary Thereto. The Regional Board will decide on an order accepting payment of the proposed liability and waiver of hearing. (Tentative Order No. R9-2004-0028, *Document No. 2*) (*Frank Melbourn*)

PURPOSE: The Regional Board will decide whether to accept Fifth Avenue Condos, LLC's signed waiver of public hearing and \$6,000 check in settlement of the allegations in Administrative Civil Liability (ACL) Complaint No. R9-2003-0375 (*Document No. 3*).

PUBLIC NOTICE: A public notice was published in the San Diego Union Tribune on November 17, 2003, and posted on the Regional Board web page on November 26, 2003. Public notice was further provided in the "Notification" section of the December 10, 2003 Regional Board Agenda.

DISCUSSION: Fifth Avenue Condos, LLC is the developer of the Trellis Project, a 149 unit condominium homes with an underground parking garage, landscaped lobby courtyard, and common entertainment courtyard. The Trellis Project is located at K Street between 5th and 6th Avenues in the historic Gaslamp District of downtown San Diego. Fifth Avenue Condos, LLC is authorized pursuant to Order No. R9-2000-0090 to discharge groundwater to San Diego Bay, but not to exceed 288,000 gallons per day. On January 23, 2003, the Regional Board enrolled Fifth Avenue Condos, LLC under Order No. R9-2000-0090 to temporarily discharge groundwater dewatering during the construction of the underground parking structure.

On May 19, 2003, Fifth Avenue Condos, LLC took one sample from their groundwater dewatering system revealing a Total Suspended Solids (TSS) result of 79 mg/L, 58% greater than the Instantaneous Maximum Discharge Specification of 50 mg/L. Since no other TSS samples were taken during May 2003, the 30-day Average for TSS for May 2003 is also 79 mg/L, 163% greater than the 30-day Average Discharge Specification of 30 mg/L.

These two TSS violations meet the definition of a “serious violation” as defined by Water Code section 13385(h)(2), because as a Group I pollutant they exceed the effluent limitation by 40 percent or more.

Water Code Section 13385(h)(1) requires the Regional Board to assess a mandatory penalty of three thousand dollars (\$3,000) for each serious violation. Therefore under Water Code section 13385(h) the amount of the mandatory minimum penalty that must be assessed is \$6,000 for the two serious violations. On October 15, 2003, the Executive Officer issued a \$6,000 ACL Complaint No. R9-2003-0375 to Fifth Avenue Condos, LLC. Consideration of the factors prescribed in Water Code section 13385(e) based upon information available to the Regional Board supports assessment of civil liability pursuant to Water Code section 13385(i) in the amount of \$6,000. On November 7, 2003, the Regional Board received a signed waiver of public hearing form and a check for \$6,000 (*Document No. 4*) from Fifth Avenue Condos, LLC.

LEGAL CONCERNS:

None.

SUPPORTING
DOCUMENTS:

1. Site location map.
2. Tentative ACL Order No. R9-2004-0028
3. Signed Waiver of Public Hearing
4. ACL Complaint No. R9-2003-0375

RECOMMENDATION:

Accept Fifth Avenue Condos, LLC’s waiver of public hearing and \$6,000 check, and adopt Tentative ACL Order No. R9-2004-0028.